

REMARKS

Claims 1-34 are pending in this application. In response to the election requirement, applicants provisionally elect the species of SEQ ID NO: 2 provided no generic claim is finally held to be allowable. This election is made with traverse for the reasons set forth below, and without prejudice to applicants' right to file divisional applications covering the subject matter of the non-elected species.

Applicants thank the Examiner for the courtesy of identifying pending claims which are in improper format and for speaking to the applicants' attorney regarding the case in an April 28, 2005 telephone conference.

In response to the Examiner's suggestion, Claims 3, 6 and 26 are amended herein.

In the April 4, 2005 Office Action, the Examiner stated that the application does not comply with the Sequence Rules, 37 CFR §§ 1.821-1.825 because the disclosure allegedly contains Sequences which are not include in the Sequence Listing. Specifically, the Examiner identified pages 16, 19 and Figure 1 of the specification.

Applicants respectfully seek clarification from the Examiner and hereby request that the Examiner identify which sequences are not included in the sequence listing. Applicants will amend the specification accordingly, in compliance with 37 C.F.R. §§ 1.821-1.825.

Further, in the April 4, 2005 Office Action, the Examiner set forth a requirement for election of species under 35 U.S.C. §121, alleging that the subject matter defined by the claims of the invention contains fifteen patentably distinct species:

SEQ ID 2; SEQ ID 3; SEQ ID 4; SEQ ID 5; SEQ ID 6; SEQ ID 7; SEQ ID 8;
SEQ ID 9; SEQ ID 10; SEQ ID 11; SEQ ID 12; SEQ ID 13; SEQ ID 14;
SEQ ID 15; and SEQ ID 16.

The Examiner stated that the species are patently distinct because none appears to share common structure with any of the others, and each must be separately searched.

As stated above, pursuant to 37 C.F.R. §§ 1.111 and 1.143, applicants provisionally elect SEQ ID NO: 2 and hereby traverse the Examiner's requirement for species election and request reconsideration thereof in view of the following remarks.

Applicants point out that the Examiner has not identified how the species differ structurally from each other, nor has the examiner relied on a reference or legal precedent. Each of the species represents an oligonucleotide PCR primer set. SEQ ID NO: 2-16 as in dependent claims 9, 28 and 30 pertain to primer sets, i.e. with a forward and reverse pair and 5' or 3' ends. Furthermore, since all of the sequence derive from corona virus, the search and examination of these sequences would not constitute a significant or undue burden on the Examiner.

In view of the forgoing, applicants respectfully submit that all sequences recited in claims 1-34 are closely related in function, effort, and mode of operation and should be examined together in one application.

The courts have recognized that it is in the public interest to permit applicants to claim several aspects of their invention together in one application, as the applicants have done herein. The CCPA has observed:

We believe the constitutional purpose of the patent system is promoted by encouraging applicants to claim, and therefore to describe in the manner required by 35 U.S.C. § 112 all aspects as to what they regard as their invention, regardless of the number of statutory classes involved.

In re Kuehl, 456 F.2d 658, 666, 117 U.S.P.Q. 250, 256 (CCPA 1973). This interest is consistent with the practical reality that a sufficiently detailed disclosure supporting claims to one aspect of an invention customarily is sufficient to support claims in the same application to other aspects of the invention.

Moreover, under the regulatory changes as a consequence of the General Agreement on Trade and Tariffs (GATT), applicants are required to conduct simultaneous prosecution, as here, requiring excessive filing costs or to otherwise compromise the term of related patent assets. Applicants respectfully suggest that in view of the continued increase of official fees and the potential limitation of applicants' financial resources, a delay in the

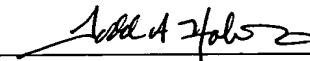
examination of the non-elected sequences will likely result in the patent term for these claims being unnecessarily shortened.

Therefore, since the only logical outcome of the present requirement to elect a sequence for examination would be to further delay the examination of the non-elected sequences, resulting in inefficiencies and unnecessary expenditures by applicants, and because there would not be any significant burden on the PTO to search the small number of sequences claimed, applicants respectfully request that the Examiner record and withdraw the requirement for species election and provide an action on the merits with respect to all pending claims.

No fee is deemed necessary in connection with the filing of this response. Should any fee be required, the Commissioner is hereby authorized to charge payment of any fees associated with the subject application, or credit any overpayment, to Deposit Account No. 02-4270.

Respectfully submitted,

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Date



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